

ORDINANCE AMENDING CITY CODE PROVISIONS REGARDING
NONCONSENSUAL TOWS

Whereas, the North Carolina Supreme Court issued an opinion in June 2014 that the Town of Chapel Hill exceeded its powers by adopting a maximum fee schedule for nonconsensual tows from private lots. *King v. Town of Chapel Hill*, 758 S.E.2d 364, 374 (2014); and

Whereas, like the Town of Chapel Hill, the Durham City Council has adopted city code provisions that authorize the council to adopt a schedule of fees setting a maximum amount that can be charged for nonconsensual tows from private lots; and

Whereas, the city council desires to repeal such city code provisions that authorize the council to adopt a schedule of fees that set a maximum amount that can be charged for nonconsensual tows from private lots, for the purpose of complying with the above referenced Supreme Court decision; and

Whereas, the General Assembly passed Session Law 2013-241, codified as N.C. Gen. Stat. § 20-219.20, which requires a tow truck operator to notify a local law enforcement officer, in certain instances, when the tow truck operator conducts a nonconsensual tow;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DURHAM ORDAINS:

Section 1. Durham City Code Section 50-390 is rewritten as follows:

“Sec. 50-390. Reporting of towed vehicles.

Every tow truck operator engaging in the business of storing vehicles that have been towed from the public streets or highways, or from private property, shall, on or before 4:30 p.m. on Wednesday of each week, deliver to the police department a list, including make, model, year, registration plate number and vehicle identification number, of all vehicles then in the possession of such tow truck operator that have been unclaimed by the registered owner, or his or her agent, for a period exceeding 48 hours.”

Section 2. Durham City Code Section 50-391 is rewritten as follows:

“Sec. 50-391. Nonconsensual tow regulations

a. A tow truck operator on the city’s rotation wrecker list, when responding to a police initiated request for towing services, shall not charge the owner of any vehicle towed without the consent of the owner an amount for towing and storage fees in excess of those fees prescribed in the schedule of police-initiated nonconsensual towing fees adopted by the city council.

Police-initiated nonconsensual tows include situations where the owner or operator is unable to consent such as in cases of: a severe accident, or as a result of the order of a police officer. Each tow truck operator on the city's rotation wrecker list shall post in a conspicuous place on the business premises and in any tow truck the permitted tow charges when conducting a police-initiated nonconsensual tow.

- b. Towing and storage fees for nonconsensual tows shall be payable by cash, debit card or credit card."

Section 3. Durham City Code Section 50-392 is rewritten as follows:

"Sec. 50-392. - Penalties.

- (a) A violation of section 50-391 shall constitute a misdemeanor and upon conviction shall be punished as provided in section 1-9.
- (b) A violation of section 50-391 shall also subject the offender to a civil penalty of \$200.00 for the first violation and \$400.00 for the second and each subsequent violation. "

Section 4. This ordinance is effective upon adoption.